

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

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IN THE MATTER OF: )  
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 )  
Clyde Pinegar )  
117 Eustice Road )  
Cordova, Alabama 35550 )  
\_\_\_\_\_ )

Order No. 09 -xxx -ST

FINDINGS OF FACTS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, (2006 Rplc. Vol.), and the Alabama Scrap Tire Environmental Quality Act Code §§ 22-40A-1 to 22-40A-24 (2006 Rplc. Vol.), and the ADEM Administrative Code promulgated thereunder, the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") makes the following finding of facts:

1. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
2. Pursuant to Ala. Code § 22-22A-11 (2006 Rplc. Vol.), the Department is the state agency authorized to administer and enforce the provisions of the Alabama Scrap Tire Environmental Quality Act Ala. Code §§ 22-40A-1 to 22-40A-24 (2006 Rplc. Vol.).
3. Ala. Code §22-40A-4(a) states that "No person may accumulate more than 100 scrap tires, except as a permitted processor, registered receiver, or permitted landfill."

4. Ala. Code §22-40A-4(b) states that “No person may expose accumulated scrap tires to the elements for more than 30 days. “

5. Ala. Code §22-40A-5(a) states that “accumulations of scrap tires for whatever purpose ... shall be removed by the person responsible for the creation or the maintenance of the accumulation, or if the person responsible is not determined, by the landowner...”

6. ADEM Admin. Code r. 335-4-4-.01(1) states that “No person may accumulate more than 100 scrap tires, except a permitted processor, a person who registers as required, or a permitted SWDF. No person may expose scrap tires to the elements for more than thirty days”

7. On March 25, 2009, Department personnel conducted an inspection and documented the existence of an unauthorized scrap tire accumulation, which was exposed to the elements, located on the property of Mr. Clyde Pinegar (hereinafter “Mr. Pinegar”) at 117 Eustice Road, Cordova, Alabama (Walker County). Department personnel determined property ownership by a review Walker County, Alabama records. The accumulation consisted of more than 100 scrap tires.

8. On March 31, 2009, the Department issued a Notice of Violation (hereinafter “NOV”) to Mr. Pinegar for an unauthorized scrap tire accumulation.

9. The Department did not receive a response to the March 31, 2009, NOV.

10. On May 12, 2009, the Department issued a Failure to Respond letter to Mr. Pinegar which requested a response to the March 31, 2009, NOV.

11. The Department did not receive a response to the May 12, 2009, Failure to Respond letter.

## **CONTENTIONS**

Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A.     **SERIOUSNESS OF THE VIOLATION:** Mr. Pinegar did not comply with the requirements applicable to the proper management of scrap tires. The Department is unaware of any irreparable harm to the environment or any threat to the safety of the public as a result of these violations. This unauthorized accumulation of scrap tires may pose a threat to human health due to the possible presence of disease vectors.

B.     **THE STANDARD OF CARE:** Mr. Pinegar failed to demonstrate a standard of care commensurate with applicable scrap tire management requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if Mr. Pinegar has realized a significant economic benefit as a result of the violations noted. However, Mr. Pinegar has not incur costs associated with proper transportation and disposal of scrap tires.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts employed by Mr. Pinegar to mitigate potential effects upon the environment that may have been created as a result of the unauthorized accumulation of scrap tires.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is unaware of previous violations of scrap tire laws and regulations by Mr. Pinegar.

F. THE ABILITY TO PAY: Mr. Pinegar has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$5,500 is appropriate, in keeping with a penalty range imposed by the Department for similar violations at other scrap tire accumulations, as follows:

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<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Unauthorized Scrap Tire Accumulation	\$100 - \$25,000
Additive Costs per Statute	\$5 per scrap tire

## ORDER

Based on the foregoing findings of fact and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-40A-4(a), 22-40A-4(b), and 22-40A-5(a), it is hereby ordered:

A. That, not later than forty-five days after issuance of this Order, Mr. Pinegar shall pay to the Department a civil penalty in the amount of \$5,500.00 for the violations cited herein. The penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P O Box 301463  
Montgomery, Alabama 36130-1463

All checks shall reference Mr. Pinegar's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the issuance of this Order and continuing each and every day thereafter, Mr. Pinegar shall cease and desist from operating an unauthorized scrap tire accumulation.

C. That, within thirty days of the issuance of this Order, Mr. Pinegar shall submit a remediation plan to the Department in accordance with ADEM Admin. Code div. 335-4. This plan shall include a schedule for remediation completion. Remediation activities shall not commence until the remediation plan is approved by the Department. Mr. Pinegar shall document remediation activities by submitting the following to the Department within thirty days of remediation completion:

1. Time period in which the remediation activities occurred.
2. Total volume of scrap tires removed from the property.
3. A copy of waste receipts documenting that all scrap tires were properly disposed of or beneficially reused in an approved manner.
4. Photographs of the site, before, during, and after remediation.

D. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Mr. Pinegar for the violations cited herein.

E. That failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against Mr. Pinegar for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this \_\_\_\_ day of \_\_\_\_\_, 2009.

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Onis "Trey" Glenn, III  
Director

**CERTIFICATE OF SERVICE**

I, \_\_\_\_\_, hereby certify that I have this date  
served the foregoing Administrative Order on \_\_\_\_\_  
by regular United States Mail, properly addressed and postage prepaid to:

**Mr. Clyde Pinegar  
117 Eustice Road  
Cordova, Alabama 35550**

Done this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
**Name**